

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EUGENE H. HEWLETT : CIVIL ACTION
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LYNN ABRAHAM, et al. : NO. 06-2864

MEMORANDUM AND ORDER

McLaughlin, J.

March 14, 2006

This is a civil rights action brought pro se against the Office of District Attorney for the City of Philadelphia, the Philadelphia Police Department, two district attorneys, a public defender, a common pleas judge, and two police officers. The plaintiff, Eugene Hewlett, alleges that the defendants violated his rights in 1985, when he was convicted of aggravated assault in a trial that he contends was tainted with constitutional errors, and again in 2003, when his 1985 conviction was used as the basis for his arrest and incarceration for the crime of purchasing a firearm as a felon. The defendants have moved to dismiss on several grounds, including res judicata, absolute immunity, failure to state a claim, and the statute of limitations. This Court will grant the motions and dismiss all claims.

Mr. Hewlett's Second Amended Complaint alleges that Mr. Hewlett was served with a summons on December 2, 2003, for attempting to purchase a firearm as a listed felon. He alleges

that a hearing had previously been held on the same matter on February 2, 2003, by the state attorney general and that he had been interviewed on the same matter on March 20, 2003, by an officer of the state police, who is not named as a defendant here. Second Am. Compl. at 2. Mr. Hewlett states that when the summons was served on December 2, 2003, he was not questioned, but was placed in a cell "from 10am to 8am the following morning of 12/3/2003" and was not given food "until around 11pm the evening of 12/03/2003." Id. Mr. Hewlett contends this incarceration was illegal and constituted "negligence in denial of equal protection" and double jeopardy. Id. He alleges that defendant Lynn Abraham, as District Attorney for the City of Philadelphia, is responsible for intentionally causing this false imprisonment. Id. at 7.

The reason Mr. Hewlett alleges that his 2003 summons and arrest was illegal is because it was based on his prior 1985 felony conviction, which he contends was itself illegal and improper. Mr. Hewlett devotes most of his Second Amended Complaint to describing what he believes were constitutional errors in that 1985 trial. Mr. Hewlett alleges that his public defender at that trial, defendant Michael J. Kelly, failed to either obtain or move for disclosure of unspecified "filmed evidence" helpful to his defense and that the Office of the Philadelphia District Attorney failed to provide him with

exculpatory evidence and filed false bills of indictment. Id. at 3. He alleges that two police officers who testified at his trial, defendants Louis Ciarrocchi and Leonard Zito, committed perjury in testifying at trial and that the presiding judge, the Honorable Lynn Abraham, now District Attorney for the City of Philadelphia, improperly allowed this testimony and used it as the basis for his sentencing and committed other errors in interpreting and applying the law. Id. at 4-6. The complaint also alleges that an unidentified officer of the Philadelphia police department hit Mr. Hewlett on the head on November 11, 1985, after Mr. Hewlett's trial but before his sentencing. Id. at 7.¹

All defendants have now moved to dismiss on a variety of grounds. The City of Philadelphia Office of District Attorney, District Attorney Lynn Abraham, and Assistant District Attorney Evan Silverstein contend that Mr. Hewlett's claims are precluded by res judicata because Mr. Hewlett previously filed a § 1983 complaint challenging the validity of his 1985 conviction, which was dismissed with prejudice. See Hewlett v. Office of the District Attorney, No. 99-6621 (complaint dismissed Jan. 19, 2000, amended complaint dismissed April 28, 2000). In a separate

¹ Mr. Hewlett also names as a defendant Assistant District Attorney Evan Silverstein (incorrectly named "Silverman" in the complaint), who was the district attorney who prosecuted him in 1985. The body of Mr. Hewlett's complaint, however, contains no allegations mentioning him.

motion to dismiss, filed in her capacity as a former judge, Lynn Abraham also raises judicial immunity. Public Defender Michael J. Kelly contends claims against him must be dismissed because public defenders and court appointed counsel are absolutely immune from civil liability under § 1983. Black v. Bayer, 672 F.2d 309, 320 (3d Cir. 1982). The City of Philadelphia, on behalf of the Philadelphia Police Department, argues its officers cannot be liable because a police officer's perjury at trial is not cognizable under § 1983, citing Briscoe v. LaHue, 460 U.S. 325, 345. (1983).

The Court, however, need not address these separate arguments because the statute of limitations, expressly relied on by all defendants except Mr. Kelly, bars Mr. Hewlett's claims. The statute of limitations for a § 1983 claim is borrowed from the forum state's limitations period for personal injury claims. Felder v. Casey, 487 U.S. 131 (1988). In Pennsylvania, the applicable statute of limitations period is two years. 42 Pa. C.S.A. § 5524.

Although ordinarily treated as an affirmative defense, the statute of limitations may be raised on a motion to dismiss where the allegations made on the face of the complaint show that the cause of action is time-barred. Benak v. Alliance Capital Management, 435 F.3d 396, 400 n.14 (3d Cir. 2006) Robinson v. Johnson, 283 F.3d 581, 588 (3d Cir. 2002). Here, Mr. Hewlett's

§ 1983 claim, as alleged in his complaint, arises from his December 2, 2003 incarceration for purchasing a firearm as a felon, which he contends was wrongly based on his unconstitutional 1985 conviction for aggravated assault. Mr. Hewlett's complaint specifies that this incarceration lasted from "10am [on December 3, 2003] to 8am the following morning." Compl. at 2. Mr. Hewlett's cause of action for being falsely detained and imprisoned therefore accrued no later than the time he was released from the state's custody on December 4, 2003. Mr. Hewlett did not file this suit, however, until June 30, 2006, almost six months after the two-year limitations period had expired.

In his response to the defendants' motions to dismiss, Mr. Hewlett contends that his suit is timely filed because the charge for which he was allegedly wrongly incarcerated was ultimately dismissed for lack of prosecution on July 30, 2004, exactly two years before he filed this suit. Mr. Hewlett's argument is misplaced. A § 1983 claim for an improper arrest and detention does not accrue when the charge for which the person is arrested is dismissed. Rather it accrues when the person is bound over by legal process after being arrested and detained, which occurs when he is arraigned or when he is bound over by a magistrate. Wallace v. Kato, 127 S.Ct. 1091, 1096 (U.S. 2007). Here, however, it is unnecessary to determine when (or even if)

Mr. Hewlett was bound over by legal process, because his complaint alleges exactly when his wrongful detention ended. Mr. Hewlett's cause of action necessarily accrued no later than the time when he was released from his allegedly wrongful detention, and his claim is therefore time-barred.²

An appropriate Order follows.

² Because all of the allegations in Mr. Hewlett's complaint are time-barred on their face, having taken place more than two years before the complaint was filed, the Court need not address whether the allegations concerning Mr. Hewlett's 1985 conviction are also barred under Heck v. Humphrey, 512 U.S. 477 (1994) as a collateral attack on a conviction that has not been reversed on direct appeal, called into question by a writ of habeas corpus, or otherwise expunged or declared invalid.

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ORDER

AND NOW, this 14th day of March, 2007, upon consideration of the Motion to Dismiss 1983 Action Pursuant to Fed. R. Civ. Pro. 12(b)(6) on behalf of Defendant Michael J. Kelly (Docket # 23); the Motion to Dismiss of Defendant City of Philadelphia (Docket # 36); the Motion to Dismiss of Defendants Lynn Abraham, Evan Silverman, and the City of Philadelphia Office of District Attorney (Docket # 39); and Motion to Dismiss Plaintiff's Complaint of Judicial Defendant Lynn Abraham (Docket # 41), and the plaintiff's responses thereto, IT IS HEREBY ORDERED that the Motions are GRANTED for the reasons set forth in the accompanying memorandum.

This case may be closed.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.